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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,750	01/26/2001	Kimihiko Nishioka	P 0277074 OL92500N-US	7416

909 7590 08/28/2002  
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EXAMINER

ASSAF, FAYEZ G

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/769,750	NISHIOKA, KIMIHIKO
Examiner	Art Unit	
Fayez G. Assaf	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 June 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-52 is/are pending in the application.

4a) Of the above claim(s) 1-6, 8-33 and 36-45 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7, 34, 35 and 46-52 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of the species of figure 11 in Paper No. 7 is acknowledged. Claims 7, 34, 35 and the newly added claims 46-52 read on the elected species. Claims 1-6, 8-33 and 36-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species.

***Claim Rejections - 35 USC § 112***

Claim 46 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim refers to conditions that do not exist in claim 7.

Correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 35, 47 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerritsen (US 4850682) or Jannson (US 5631754).

Gerritsen discloses a variable hologram element (Gerritsen, Fig. 3, Janson, Fig 1b), which comprises a photonic crystal (Gerritsen, line 53 of Col. 3) and a liquid crystal. The variable hologram is employed in a display device (Jannson, Abstract).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutherland et al. (US 5942157).

Sutherland discloses a variable hologram element which (see Fig. 1) comprises a liquid crystal impregnated into interstitial

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voids in a dispersed polymer. Surtherlan teaches polymer dispersed liquid crystal rather than a photonic crystal dispersed liquid crystal.

However, proper choice of materials can be achieved through routine experimentation.

It would have been obvious, at the time the invention as made to choose a crystal rather than a polymer, since it has been held to be within the general skill of worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Claims 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jannson or Gerritsen.

Jannson or Gerritsen discloses the claimed invention except for the manner in which the variable hologram is intended to be used.

However, utilizing the hologram in such optical devices (finder, optical pick-up, variable-focus glasses or a measuring device) is well known in the art. More importantly, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus

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satisfying the claimed structural limitation. *Ex Parte Masham*, 2 USPQ2d 1647 (1987).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fayez Assaf whose telephone number is (703) 306-5526. The fax number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Fayeza Assaf

8/21/02



**Cassandra Spyrou**  
**Supervisory Patent Examiner**  
**Technology Center 2800**